

Court No. - 3

Case :- WRIT - C No. - 3000061 of 1997

Petitioner :- Rakesh Das

Respondent :- Addl.Commissioner Faizabad Division

Counsel for Petitioner :- H.S.Sahai,Rakesh Kumar Srivastava

Counsel for Respondent :- C S.C.,Mohammad Aslam Khan

and

Case :- WRIT - C No. - 3000062 of 1997

Petitioner :- Rajesh Das

Respondent :- Addl.Commissioner Faizabad Division

Counsel for Petitioner :- H.S.Sahai,Mohammad Aslam Khan

Counsel for Respondent :- C S.C.,Rakesh Kumar Srivastava

Hon'ble Irshad Ali,J.

1. The controversy involved in these writ petitions being similar in nature, the writ petitions are being decided by means of a common judgment and order treating Writ C No. 3000061 of 1997 to be leading writ petition.

2. Heard Mohd. Arif Khan, learned Senior Counsel assisted by Sri Mohd. Aslam Khan and Sri R.K. Srivastava, learned counsel for the petitioners and Sri Rajiv Srivastava, learned Additional CSC for respondent - State.

3. By means of present writ petitions, the petitioners are challenging the orders dated 07.01.1997 and 22.12.1987 passed by respondent Nos.1 & 2 contained as Annexure Nos.4 & 3, respectively, to the writ petition.

4. Brief fact of the case is that initially a notice under Section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960, (for short, "the Act") was issued to Mahant Dhroo Das s/o Muneshwar Bux resident of Village and Post Kotwa Dham, District Barabanki indicating therein as to why an area of 74

bigha 10 biswa 8 biswansi in terms of irrigated land may not be declared as surplus. In the said notice, an area of 52 bigha 10 biswa 13 biswansi was indicated to be ceiling area of tenure holder.

5. Initially, the prescribed authority by order dated 17.11.1978 declared an area of 118 bigha 8 biswa 13 biswansi as surplus land and against the said order an appeal was filed, which was allowed vide order dated 13.08.1979 and the case was remanded to the prescribed authority for passing a fresh order after evidence.

6. After remand of the case, the prescribed authority declared an area of 68 bigha 16 biswa 3 biswansi as surplus land in terms of irrigated land. The said order of prescribed authority was challenged in appeal, which was decided by the Civil Judge, Barabanki vide order dated 20.11.1981 and the appeal was allowed and the order dated 28.02.1981 passed by the prescribed authority was set aside and the prescribed authority was directed to decide the matter in the light of the directions provided in the judgment and also in the earlier order passed in Appeal No.8/79 decided by judgment and order dated 13.08.1979.

7. During pendency of ceiling proceedings, Mahant. Dhroo Das died in year 1986 and was substituted by his two sons and one grand-son. In the objection filed by the tenure holder, it was asserted that entire land of village Kotwadham, which is 58 bigha 14 biswa 5 biswansi is an old grove since before the date of vesting and in support of this contention, khasra extracts of 1378 fasli and 1380 fasli were filed.

8. Before the prescribed authority, an advocate was appointed as Commissioner, who submitted his report and found certain plots as grove. The objection was filed by the tenure holder and

the additional report was called for. The prescribed authority without disposing of the objection, deputed the Naib Tehsildar for submitting a report. The Naib Tehsildar submitted a report and found that over plot Nos.10, 11, 13, 17, 18 and others were found to be having a large number of trees and shrubs.

9. The objection was filed against the report of Naib Tehsildar, who had submitted his report but that also remained undisposed of. The prescribed authority, however, did not accept the contention of the tenure holder treating the plots of village Kotwa Dham to be grove. In this context, the petitioner is advised to state that the definition of grove was misconstrued by the prescribed authority.

10. The tenure holder further asserted that certain lands were transferred to stranger, who is not family member of the tenure holder. The sale deed was genuine, bona fide and with adequate consideration. Other sale deeds were also executed in October, 1971 to the family members of the tenure holder and also gift deeds were executed to the family members of the tenure holder.

11. The prescribed authority did not find favour with the contention of the tenure holder either relating to the sale deed or relating to the gift deed. The petitioner is advised to state that merely because a transaction has been made after 24.01.1971, this alone will not be sufficient to discard the transaction. The sale deeds were executed in favour of the members of the family of the tenure holder, who had their own means and funds to purchase the land and in preference to the stranger if the sale deeds were executed to adult members of the family of the tenure holder with adequate consideration, the sale deed could not be ignored merely on this ground since the principle of considering the bonafide transaction and adequate consideration

followed by possession will also apply even to the sale deed executed in favour of the adult members of the family of the tenure holder.

12. The mutation was affected in pursuance of the gift deed and sale deeds within a short time after execution of the gift deed and sale deeds. The tenure holder did not remain in possession over the land covered by the gift deed and sale deeds. The petitioner stated that the reasons for discarding the said transaction by the prescribed authority are contrary to law and said transaction could not be ignored. The tenure holder further contended that the land in village Amaniyapur is Oosar and was Oosar on the relevant date for which there was oral evidence led by the tenure holder which has not been considered by the prescribed authority.

13. The tenure holder said that plot No.12 having an area of 70 bighas is un-irrigated and in this very plot there are 300 mango trees in 36 bigha. The Advocate Commissioner in its report said that cultivation is being done only in 3 bigha and over 20 bigha there are 482 trees of Guava and 411 old trees over 50 bighas of Katahal, Aanwala and Neem.

14. There is no dispute of the fact that there is a boring in plot No.12 but it is not capable of irrigating for entire area of 70 bigha and the prescribed authority did not follow the procedure provided in Section 4(A) of the Act. No legal inspection was made by the prescribed authority and the khasra extracts of the relevant years were not considered. The entire area of plot No.12 does not fall within the command area to plot No.12 and it is also incorrect that the said plot is capable of producing food grain in the area.

15. No sugar cane crop has been sown by the petitioner over the said plot and as such the reasons adopted by the prescribed

authority are contrary to law. Again, the prescribed authority has placed reliance on the report and partly on the report of the Naib Tehsildar which could not be relied upon since the objection has not been disposed of. It was further asserted that land of the village Masauda, Amanipur, Madarpur, Sardaiya and Amral Katehba is Oosar. To prove this fact about this land being Oosar, there was no evidence in rebuttal but the prescribed authority without considering the oral evidence, decided the matter against the tenure holder.

16. The tenure holder further contended that the land of village Kotwa Dham is used for residential purpose. In plot No.351, there is a Samadhi and in plot Nos.356, and 386 there is old Dharmshala and plot No.384, 376, and 361 have several samadhi and 349 is abadi and in plot No.311 and 346 there are samadhi. Plot No.353 as also other plots are not agricultural but is used for holding fair.

17. The tenure holder further contended that most of the land of village Kotwa Dham being samadhi and having samadhi, the land should be expunged from the ceiling operation. The prescribed authority misconstruing the evidence and relying on unconfirmed report of the Advocate Commissioner and Tehsildar and without disposing the objection, decided the matter and declared 68 bigha, 16 biswa, and 3 biswansi in terms of irrigated land as surplus land by order dated 22.12.1987.

18. Feeling aggrieved by the order passed by the prescribed authority, the petitioner went in appeal before the Commissioner, which came up before the Additional Commissioner - opposite party No.1, who by order dated 07.01.1997 dismissed the appeal. The Additional Commissioner also without application of mind simply confirmed the findings recorded by the prescribed authority without considering the

matter.

19. The petitioner is advised to state that the entire findings recorded by the prescribed authority are contrary to law. The opposite party Nos.1 & 2 fell in error in not accepting the choice by the petitioner. The petitioner submits that the opposite party Nos.1&2 have not considered the various sale deeds and gift deeds in accordance with law and also in the light of the decision of Hon'ble Apex Court.

20. The other heirs of Mahant Dhroo Das are also filing writ petitions separately and there is no conflict amongst them. The findings recorded by the opposite party Nos.1&2 are perverse in nature and contrary to law. The petitioner is still in possession over the land in question and has not been dis-possessed in pursuance of the impugned orders.

21. The ceiling authorities are acting illegally besides the fact that the land has been declared surplus and for this purpose 27.04.1997 was fixed and the Collector has deputed the S.D.M. to visit Kotwa Dham on 27.04.1997 for allotment of declared surplus land.

22. Assailing the impugned orders, submissions of learned Senior Counsel for the petitioner is that opposite party Nos.1&2 have committed manifest error of law in not considering the evidence and material on record and in placing reliance on the report against which the objection filed remain undisposed of.

23. Second submission of learned Senior Counsel for the petitioner is that opposite party Nos.1&2 have committed manifest error of law in not deciding the matter of the land under Section 4(A) of the Act.

24. His next submission is that opposite party Nos.1&2 have committed manifest error of law in not deciding the genuineness of the gift deed and sale deeds in accordance with

law and committing error of law in passing impugned orders.

26. His next submission is that the opposite party Nos.1&2 have committed manifest error of law in not considering choice of the petitioner.

27. On the other hand, learned Additional CSC for respondent - State submitted that in view of statement of fact made in paragraph 5, 6 & 7 of counter affidavit dated 05.04.1999, the objection of the petitioner is that the objection was not decided by the prescribed authority and he proceeded to pass the order, is incorrect. In fact, the authority after deciding the objection, has proceeded to pass the order in accordance with law.

28. He next submitted that on the land in dispute, there are trees of Khajur and shrubs, which is not grove land, therefore, the finding recorded by the prescribed authority and appellate authority are just and valid.

29. He further submitted in paragraph 7 of the counter affidavit that gift and sale deeds were executed in favour of family members of the tenure holder, thus, order of the prescribed authority do not suffer from any infirmity or illegality and the writ petition deserves to be dismissed.

30. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

31. To resolve the controversy involved in the matter, Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 is being quoted herein below:

"[4-A. Determination of irrigated land - The prescribed authority shall examine the relevant khasras for the years 1378 Fasli, 1379 Fasli and 1380 Fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary, and thereupon if the prescribed authority is of opinion :—

Firstly, (a) that, irrigation facility was available for any land in respect of any crop in any one of the aforesaid years ; by (i) any canal included in Schedule no. 1 of irrigation rates notified in notification no. 1579-W/XXIII

—62-W-1946, dated March 31, 1953, as amended from time to time ; or

(ii) any lift irrigation canal ; or

(iii) any State tube-well or a private irrigation work ; and (b) that at least two crops were grown in such land in any one of the aforesaid years ; or

Secondly, that irrigation facility became available to any land by a State Irrigation Work coming into operation subsequent to the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, and at least two crops were grown in such land in any agricultural year between the date of such work coming into operation and the date of issue of notice under section 10 ; or

Thirdly, (a) that any land is situated within the effective command area of a lift irrigation canal or a State tube-well or a private irrigation work ; and

(b) that the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year ; then the prescribed Authority shall determine such land to be irrigate land for the purposes of this Act.

Explanation I — For the purposes of this section the expression ‘effective command area’ means an area, the farthest field whereof in any direction was irrigated —

(a) in any of the year, 1378 Fasli, 1379 Fasli and 1380 Fasli ; or

(b) in any agricultural year referred to in the clause ‘secondly’.

Explanation II — The ownership and location of a private irrigation work shall not be relevant for the purpose of this section.

Explanation III — Where sugarcane crop was grown on any land in any of the years 1378 Fasli, 1379 Fasli and 1380 Fasli, it shall be deemed the two crops were grown on it in any of these years, and that the land capable of growing two crops in an agricultural year.]”

32. On perusal of impugned order dated 22.12.1987, it is apparent that the prescribed authority has not decided the objection raised before it and passed the order. On perusal of impugned order dated 07.01.1997, it is also transpired that the appellate authority did not apply its mind while considering the matter and has passed the impugned order.

33. The question that whether un-irrigated or irrigated land has availability of irrigation through canal, Government tube well, lift irrigation canal or private irrigation work, soil of the land is capable of growing at least two crops in an agricultural year or not, the prescribed authority has not examined the relevant khasras for the years 1378 Fasli, 1379 Fasli and 1380 Fasli. The latest village map and such other records as it may consider

necessary and local inspection, where it considers necessary has not been made. The objection filed by the petitioner before the prescribed authority has also not been decided, which renders the impugned order illegal. The authority concerned has not considered the fact that private tubewell is not able to irrigate the entire land.

34. The prescribed authority has also not decided that on the land there is grove, samadhi and some land is being used for fair organized by the local public, therefore, the impugned order suffers from apparent illegality. The appellate authority has also not taken care of the facts narrated above and has affirmed the order passed by the prescribed authority without application of mind, therefore, the impugned order passed by the appellate Court is also illegal and suffers from apparent illegality and, therefore, the impugned orders have not been passed in accordance with Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

35. In view of discussions made above, the impugned orders are liable to be set-aside.

36. Accordingly, the impugned orders dated 07.01.1997 and 22.12.1987 passed by respondent Nos.1 & 2 contained as Annexure Nos.4&3, respectively to the writ petition are hereby set-aside.

37. The writ petition succeeds and is **allowed**.

38. The matter is remanded back to the prescribed authority - respondent No.2 to decide it afresh in accordance with Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 for considering the facts narrated above and the objections raised before it.

Order Date :- 12.11.2024

Adarsh K Singh